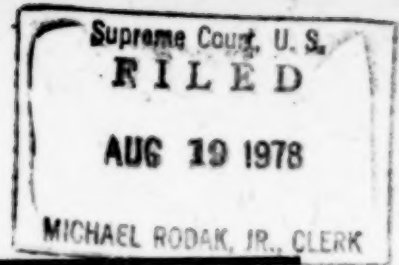


No. 77-1783



In the Supreme Court of the United States
OCTOBER TERM, 1978

AMERICAN NATIONAL BANK, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT*

**BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION IN OPPOSITION**

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 574 F. 2d 1173. The opinion of the district court (Pet. App. A) is reported at 420 F. Supp. 181.

JURISDICTION

The judgment of the court of appeals was entered on April 18, 1978. The petition for a writ of certiorari was filed on June 16, 1978. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an action brought by the Equal Employment Opportunity Commission alleging that petitioner had engaged in widespread employment discrimination against blacks should have been dismissed because of the delay between the filing of the initial charge against petitioner and the filing of the Commission's enforcement action.

STATEMENT

In 1969, Sandra Holland filed a charge with the Equal Employment Opportunity Commission alleging that petitioner had discriminated against her by refusing to hire her because of her race and that petitioner had discriminated against blacks in general (J.A. 166).¹ The Commission initiated an investigation of petitioner's employment practices and in 1974 determined that there was reasonable cause to believe that the charge was true. See 42 U.S.C. (Supp. V) 2000e-5(b).

In its reasonable cause determination, the Commission reported that its investigation had disclosed evidence of widespread employment discrimination on petitioner's part. After efforts at conciliation had failed, the Commission in 1976 brought the instant enforcement action. See 42 U.S.C. (Supp. V) 2000e-5(f)(1). (Pet. App. 16-17.) The Commission's complaint alleged that petitioner had engaged in a continuing practice of excluding blacks from employment. During pre-trial discovery, the Commission identified 47 black persons, in addition to the charging party, as possible victims of petitioner's discriminatory practices (Pet. App. 17).

On petitioner's motion for summary judgment, the district court dismissed the complaint for laches. It ruled that petitioner had been prejudiced because evidence relating to the charging party's claim had been lost as a result of the delay between the filing of the charge and the bringing of suit (Pet. App. 1-13).

The court of appeals vacated and remanded the case for trial (Pet. App. 15-19). The court noted that the Commission's suit was not concerned merely with the charging party's complaint, but alleged a pattern and practice of racial discrimination by petitioner. The Commission was entitled to bring suit on these broader

¹"J.A." refers to the joint appendix in the court of appeals.

grounds, the court found, because they were founded on the reasonable cause determination and the Commission's conciliation efforts. Accordingly, the court held that any prejudice resulting from the loss of evidence concerning the charging party's claim "may justify denial of relief to Holland, but it does not establish the bank's inability to defend the pattern and practice suit." (Pet. App. 19.) Whether the delay caused prejudice to the defense of the entire suit, the court concluded, could not be determined until after trial (*ibid.*).

ARGUMENT

1. The court of appeals did not enter a final judgment in this case, but merely remanded the case for trial. In the absence of extraordinary circumstances, this Court has traditionally declined to review non-final orders of the courts of appeals. See *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co.*, 389 U.S. 327; *Hamilton-Brown Shoe Co. v. Wolf Brothers*, 240 U.S. 251, 258; *American Construction Co. v. Jacksonville Railway*, 148 U.S. 372, 378, 384. In this case, immediate review would be particularly inappropriate. The court of appeals held that it could not determine whether petitioner had been prejudiced by the delay until after the facts have been fully developed at trial. Since the court of appeals has declined to review petitioner's claim of prejudice at this time, this Court should do the same. If a final judgment is ultimately entered against petitioner, this Court can consider all claims arising out of that judgment at that time, including any claims of prejudice resulting from delay.

2. On the merits, the court of appeals properly applied this Court's recent decision in *Occidental Life Insurance Co. v. Equal Employment Opportunity Commission*, 432 U.S. 355. *Occidental Life* held that there are no statutory

limitations on the period within which the Commission must bring suit, but that defendants are protected from any prejudice that may result from Commission delay in filing suit by the district court's authority to restrict or deny relief. 42 U.S.C. (Supp. V) 2000e-5(g). Under this standard, the court of appeals properly left to the district court the task of determining whether the delay in this case should result in any restriction on relief, if relief is found to be otherwise appropriate. See 432 U.S. at 373.

Contrary to petitioner's suggestion (Pet. 11), the Commission's action does not stand or fall on the success of the charging party's claim. Once the initial charge has been filed and an investigation and conciliation efforts completed, the Commission may sue under Section 706 of the 1964 Civil Rights Act, 78 Stat. 259, as amended, 42 U.S.C. (Supp. V) 2000e-5, to redress more general violations. In such a Section 706 action, the Commission need only show that the more general violations were discovered in the course of the Commission's investigation of the initial charge and that they were addressed in the reasonable cause determination; it is not essential that the individual claim of the charging party be meritorious. *Equal Employment Opportunity Commission v. General Electric Co.*, 532 F. 2d 359, 366 (C.A. 4). See also *Equal Employment Opportunity Commission v. Hearst Corp.*, *Seattle Post-Intelligencer*, 553 F. 2d 579, 580 (C.A. 9); *Equal Employment Opportunity Commission v. Kimberly-Clark Corp.*, 511 F. 2d 1352, 1363 (C.A. 6), certiorari denied, 423 U.S. 994; *Johnson v. Nekoosa-Edwards Paper Co.*, 558 F. 2d 841, 846-847 (C.A. 8), certiorari denied *sub nom. Nekoosa Papers, Inc. v. Equal Employment Opportunity Commission*, 434 U.S. 920.

Finally, petitioner claims (Pet. 10-13) that because of the passage of time, the Commission cannot prove that Holland filed a timely charge following petitioner's refusal to hire her. Holland's charge, however, alleged more than individual discrimination; it alleged discrimination against blacks in general. The Commission's investigation confirmed that petitioner had engaged in a continuing pattern of discrimination against blacks, as charged. Accordingly, even if evidence relating to Holland's individual claim has been lost, her charge nevertheless presented a timely claim of discrimination against blacks in general and thus provides a basis for the Commission's suit.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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